

Traditional Knowledge (TK) and Traditional Cultural Expressions (TCEs): An overview of policy and legal issues from an Intellectual Property (IP) perspective

Claudio Chiarolla
Traditional Knowledge Division

Constantine,
April 5, 2016

Traditional Knowledge (TK)

- TK refers to the knowledge resulting from intellectual activity in a traditional context, and includes know-how, practices, skills, and innovations.
- It is not limited to any specific technical field, and may include agricultural, environmental, and medicinal knowledge, and knowledge associated with genetic resources.

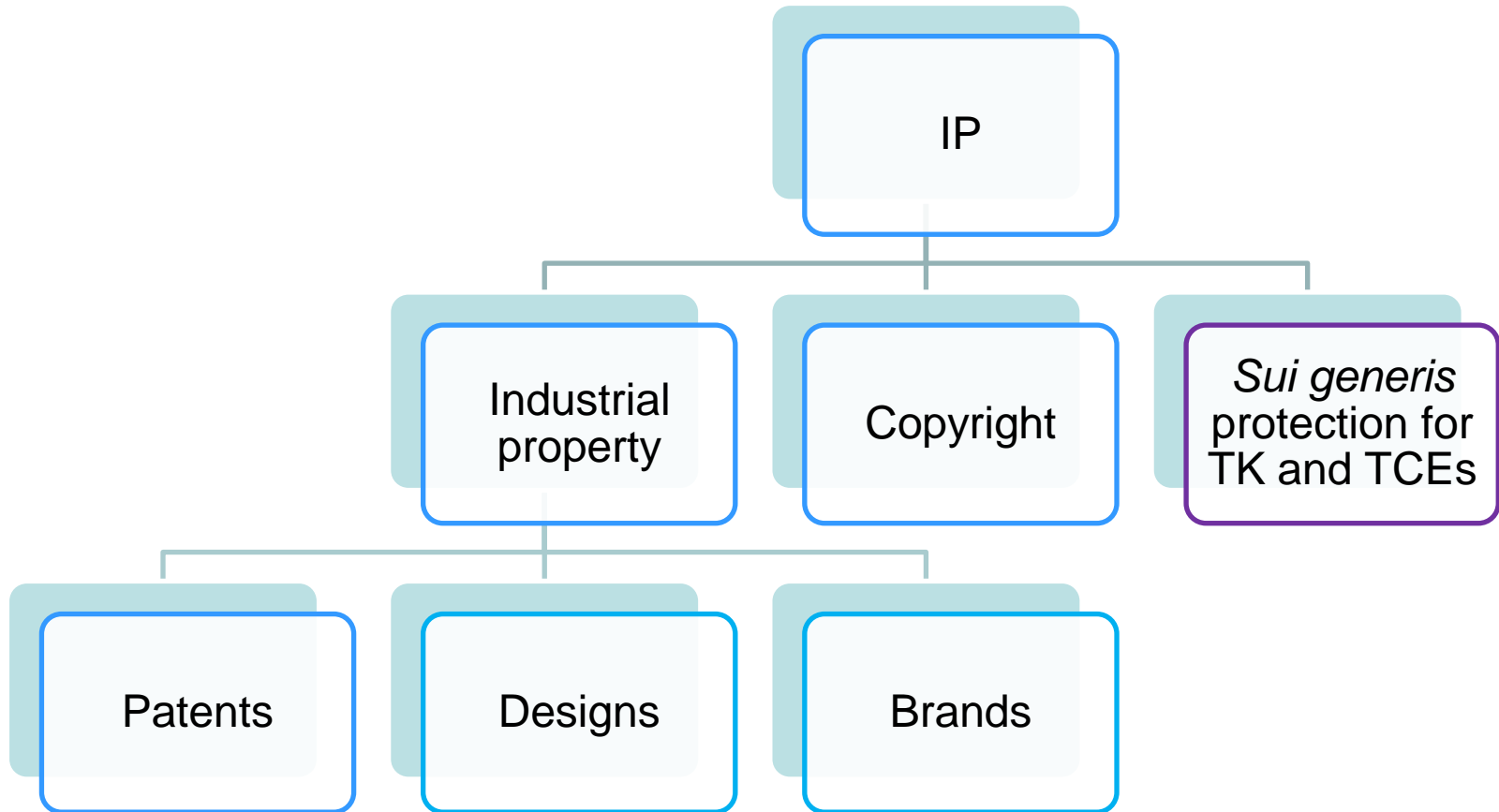
Examples of TK

- The San people use hoodia cactus to stave off hunger while out hunting
- Sustainable irrigation is maintained through traditional water systems such as the aflaj in Oman and Yemen, and the qanat in Iran
- Cree and Inuit maintain unique bodies of knowledge of seasonal migration patterns of particular species in the Hudson Bay region
- Indigenous healers in the western Amazon use the Ayahuasca vine to prepare various medicines, imbued with sacred properties.

Traditional Cultural Expressions (TCEs)

- May be considered as the forms in which traditional culture is expressed;
- Form part of the identity and heritage of a traditional or indigenous community / nation;
- Are passed down from generation to generation.
- Are integral to the cultural and social identities of indigenous and local communities / nations, they embody know-how and skills, and they transmit core values and beliefs.

The intellectual property family tree



What are the intellectual property issues related to TK and TCEs?

- Innovations and creations based on TK/TCEs can be protected using patents and copyright (“works inspired by folklore”)
- But the ‘underlying’ TK/TCEs are unprotected, despite the fact that they are valuable and important
- **Should underlying TK/TCEs be “protected” in the intellectual property sense?
... and, if so, what does “protected” mean?**

What is Protection?

- Treating TK/TCEs as intellectual property: Holders have a say over **access and use** of TK/TCEs by third parties
- Using intellectual property principles and values to prevent unauthorized or inappropriate uses of TK/TCEs by third parties (misuse and misappropriation)
- *Sui generis* protection: Intellectual property adapted to respond to the particular features of TK/TCEs
- Different from preservation and safeguarding

Protect? How?

■ Positive protection ... granting of rights that empower communities / nations to promote their TK/TCEs, control their uses by third parties and benefit from their commercial exploitation.

■ Defensive protection ... to stop people outside the community / nation from acquiring intellectual property rights over TK/TCEs.

Protect? How?

- Legal measures?
- Practical measures?

- At a national level?
- At a regional level?
- At an international level?

Positive protection: Peru - Law No. 27811 of 24 July 2002

Protection regime for the collective knowledge of indigenous peoples derived from biological resources

- Collective knowledge connected with biological resources
- Prior informed consent
- License contracts for the use of collective knowledge
- Benefit-sharing / Fund for the Development of Indigenous Peoples
- Public register / Confidential register / Local registers
- Role of the State
- References to customary laws

Positive protection: Algeria - Copyrights and neighboring Rights Act, 2003

Article 8

- Works of traditional cultural heritage (...) shall be granted special protection as provided for in the provisions herein.

Works of traditional cultural heritage shall consist of the following:

- Traditional classic music works,
- Musical works and popular songs,
- Popular expressive forms produced, developed and deep-rooted in the national community, and have the characteristics of traditional culture of a nation,
- Anecdotes, poems, dances and folklore shows,
- Works of popular arts such as drawings, oil paintings, sculptures, carvings, pottery and mosaic,
- Handcrafts on metal and wood, jewels, baskets, needle works, Zaraby tricot and textiles.

Article 139

- The National Bureau of Copyrights and Neighboring Rights shall protect works of public property and traditional cultural heritage.

Positive protection: Algeria - Copyrights and neighboring Rights Act, 2003

Article 140

- The utilization of works mentioned in Article 139 [works of public property and works of traditional cultural heritage] above shall be subject to a license from the National Bureau of Copyrights and Neighboring Rights. However, if the utilization is profitable, the National Bureau shall receive a royalty to be calculated in proportion to the revenues or arbitrarily calculated as per the terms specified in the collection system thereof. The royalty mentioned in the previous paragraph shall be allocated to finance counting and maintaining works.

Article 141

- The National Bureau shall control the extent of appropriate utilization of works provided for in Article 139 herein, and shall be free to reject or suspend each utilization that is detrimental thereto.

Article 142

- Each user of works provided for in Article 139 herein shall respect the integrity of these works and shall be keen to notify them to public subject to the originality thereof.

Other examples

- Tunisia: Law No. 94-36 (1994) on Literary and Artistic Property
- Egypt: Law No. 82 (2002) pertaining to the protection of intellectual property rights, copyrights and neighboring rights
- Malaysia: Act 634 (2004) on the Protection of New Plant Varieties
- Zimbabwe: Law No. 42 (2004) Copyright and Neighbouring Rights Act (Chapter 26:05)

Traditional Knowledge & Traditional Cultural Expressions Laws

Find laws, treaties and regulations on the protection of traditional knowledge (TK) and traditional cultural expressions (TCEs).

Subject Matter

**** Any ****
Traditional Knowledge
Traditional Cultural Expressions
Genetic Resources

Issue(s)

**** Any ****
Subject Matter of Protection
Beneficiaries or Rightholders
Scope of Protection
Exceptions and Limitations

Country / Organization *

**** Any ****
Afghanistan
Albania
Algeria
Andean Community
Angola
Antigua and Barbuda
ARIPO
Armenia
Azerbaijan

Search

Reset

Related links

[Legal texts relevant to genetic resources](#)

[Treaties on TK and TCEs](#)

[IP laws & treaties \(WIPO Lex\)](#)

<http://www.wipo.int/tk/en/databases/tklaws/>

Examples of Defensive Protection

- National Commission against Biopiracy of Peru
 - Created by Law N° 28216 (2004)

- Traditional Knowledge Digital Library of India (TKDL)

National Commission against Biopiracy of Peru

- Task: Developing actions to identify, prevent and avoid acts of biopiracy with the aim of protecting the interests of the Peruvian State.
- Main functions:
 - provide protection against acts of biopiracy;
 - identify and follow up patent applications made or patents granted abroad that relate to Peruvian biological resources or collective knowledge of the indigenous peoples of Peru;
 - make technical evaluations of the above-mentioned applications and patent grants;
 - issue reports on the cases studied;
 - lodge objections or institute actions for annulment concerning the above-mentioned patent applications or patent grants;

The Traditional Knowledge Digital Library (TKDL) of India

- Objective: Prevent misappropriation of Indian TK
 - Break language and format barriers
- Input: Ayurvedic, Unani, Siddha and Yoga systems of medicine in local languages
- Output: Multilingual database (English, French, Spanish, German and Japanese)
 - For use of International Patent Offices, in the framework of access and non disclosure agreements: For search and examination only ... can give print outs to patent applicants for citation purposes
 - The content should not be disclosed to third parties

- Should underlying TK/TCEs be “protected” in the intellectual property sense?
- At the national level: is there a need to establish legal measures or use practical mechanisms to protect TK and TCEs?
- What is needed at the international level?